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Supreme Court, U.S.
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In The

# Supreme Court of the United States

THE CITY OF LOS ANGELES,

*Petitioner,*

v.

ALAMEDA BOOKS, INC. and
HIGHLAND BOOKS, INC.,

*Respondents.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## PETITIONER'S REPLY BRIEF

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## 1. INTRODUCTION

If one were to believe respondents and their *amici*, the First Amendment sky will immediately fall down on the City of Angels should this Court reverse the Ninth Circuit. However, as with most "the sky is falling" predictions, once the facts are separated from the panic and hyperbole, the cosmic catastrophe fails to materialize. In order to arrive at their doomsday prediction, respondents and their *amici* create the proverbial straw man stuffed with issues not before the court, evidence not in the record, and inapposite case law.

The issue in this Court is the constitutionality of one portion of the City's comprehensive zoning regulations. The trial court and court of appeals parsed the ordinance, determining the City violated the First Amendment by requiring that all adult businesses be separated from each other by 1000 feet and prohibiting more than one adult business at a location. The Ninth Circuit concluded that the City did not have sufficient evidence to justify its ordinance. In doing so, both the district court and the Ninth Circuit misapplied the First Amendment zoning jurisprudence for adult businesses enunciated by this Court in *Young v. American Mini Theatres*, 427 U.S. 50 (1976) (*Young*) and *City of Renton v. Playtime Theatres*, 475 U.S. 41 (1986) (*Renton*).

## 2. ARGUMENT

### A. This Court Has Twice Rejected the Need for Particularized Findings or Comparative Studies Regarding the Secondary Effects of Adult Entertainment Businesses.

Respondents and their *amici* loudly assert that the First Amendment requires the City to make particularized findings or produce comparative evidence of negative secondary effects in order to justify its regulation requiring 1000 feet between adult entertainment businesses, thereby prohibiting more than one adult business at a location.[1] The argument that the First Amendment requires particularized findings to justify zoning regulations on the location of adult businesses is not new. It merely recycles a similar argument raised and rejected by this Court in the past. This was, for example, specifically raised in *Young*. See, *e.g.*, Brief of Respondents, No. 75-312, at 24 ("None of the [evidence] contain any particularized showing that adult theatres and bookstores- . . . contribute in any manner whatsoever to the deterioration of surrounding neighborhoods."); and at 56 ("Detroit has failed to sustain its heavy burden of proving that [adult businesses] will, if 'clustered' with other 'regulated uses,' cause neighborhood blight and deterioration" and then "None of the [evidence] contain any particularized showing that [adult businesses] contribute in any manner whatsoever to the deterioration of surrounding neighborhoods."). This Court rejected the need for particularized findings or evidence, so long as there

[1] See, *e.g*, Brief of DKT Liberty Project, pp. 16-22; Respondents' Brief, pp. 11-12.



was a "factual basis for the Common Council's conclusion that this kind of restriction will have the desired effect." *Young*, 427 U.S. at 71 (plurality opinion).

In another case in 1984, the Ninth Circuit held that the City of Renton failed to show a substantial governmental interest in its zoning ordinance because Renton lacked specific evidence showing that one adult theater produced any secondary effects. *Playtime Theatres, Inc. v. City of Renton*, 748 F.2d 527, 536-537 (9th Cir. 1984). This Court specifically rejected the Ninth Circuit's reasoning because it imposed an "unnecessarily rigid burden of proof." *Renton*, 475 U.S. at 50.

Now in the present case, some sixteen years after this Court decided *Renton*, the Ninth Circuit again invalidated a portion of a zoning ordinance regulating adult businesses using the same, now discredited reasoning it applied in 1984. The Ninth Circuit's decision now before the Court simply cannot be reconciled with *Young* and *Renton*.

The argument that the City must show particularized findings or evidence flows from the incorrect assumption that a zoning ordinance regulating the location of adult businesses is a direct regulation of speech and, therefore, strict scrutiny applies.[2] However, this Court rejected

[2] This was also raised in *Young*. *See*, Brief of Respondents, No. 75-312, at 28 (The zoning ordinance here "must be analyzed as a direct abridgment of First Amendment interests.") and at 57 ("Since Detroit's classification is subject to strict judicial scrutiny, the City cannot rely on any presumption of validity, but must carry a heavy burden of justification."). It was raised again in *Renton*. *See*, Brief of Appellees, No. 84-1360, at 21 ("The test of these restrictions *must* be 'strict scrutiny.' ") (Emphasis in the original.).

strict scrutiny analysis in both *Young* and *Renton*, establishing the principle that zoning regulations of adult businesses should be evaluated using the standards set forth in *United States v. O'Brien*, 391 U.S. 367 (1968) (*Young*, 427 U.S. at 79-82 (Powell, J., concurring) and *Renton*, 475 at 49-50) and *Clark v. Community For Creative Non-Violence*, 468 U.S. 288 (1984). *Renton*, 475 U.S. at 50.

Undeterred by precedent, respondents and their *amici* cite *United States v. Playboy Enterprises Group*, 529 U.S. 803 (2000), which concerned a challenge to a federal statute requiring cable operators to either scramble or block sexually explicit cable channels or limit access time to between 10 p.m. and 6 a.m. when children do not usually watch cable. In *Playboy*, "[t]he speech in question is defined by its content; and the statute which seeks to restrict it is content based." *Id.* at 811. Therefore, "it [could] stand only if it satisfies strict scrutiny." *Id.* at 812.

This Court in *Playboy*, however, restated the obvious and made clear that locational zoning regulations of adult businesses are subject to the more deferential standard of judicial review set out in *Young* and *Renton*. This Court specifically explained in *Playboy* that *Young* and *Renton* are "irrelevant to the question here" because the Court has "made clear that the lesser scrutiny afforded regulations targeting the secondary effects of crime or declining property values has no application to content-based regulations targeting the primary effects of protected speech." *Playboy* at 815.



**B. The City May Introduce Evidence at Trial in Support of its Legislative Judgment and Is Not Limited to the Legislative History.**

Respondents assert that judicial review of legislative enactments is limited to "the materials and arguments which were in fact before the City Council at the time of enactment of the challenged ordinance." Respondents' Brief at 30. Essentially, respondents' *amici* want the right to introduce evidence before this Court to challenge the City's regulation, at the same time respondents are demanding that the City be forever barred from raising a vigorous defense of the reasonableness or effectiveness of its legislative judgment by excluding any post-enactment evidence, no matter how material. As a practical matter, post-enactment evidence is far more critical in a case such as the one now before the Court where the legislative judgment is challenged some 12 or 15 years after the ordinances are enacted, then when the challenge is raised immediately after the enactment. Nonetheless, this notion of post-enactment evidence preclusion was adopted by the court of appeals. App. 15.

Notwithstanding the due process and fair trial issues associated with this one-sided approach to judicial fact finding, the precise issue of evidence preclusion in the context of adult business zoning regulations has been considered by at least three courts of appeals and all concluded that respondents' approach finds no support in the law. These decisions also make clear that this Court has never said that the government is limited only to the evidence before the legislature at the time of adoption in order to justify the challenged legislative judgment at trial.

In *Phillips v. Borough of Keyport*, 107 F.3d 164 (3rd Cir.), *cert. denied*, 522 U.S. 932 (1997), the court discussed the issue of evidence preclusion at length, carefully canvassing relevant case law. *Id.* at 178-179. The court first noted that it could "find no such rule in *Renton*, *Mitchell*,[3] or any other governing precedent." *Id.* at 178. The court then went on to say:

> "There is a significant difference between the requirement that there be a factual basis for a legislative judgment presented in court when the judgment is challenged and a requirement that such a factual basis have been submitted to the legislative body prior to the enactment of the legislative measure. We have *always* required the former; we have *never* required the latter. Whatever level of scrutiny we have applied in a given case, we have always found it acceptable for individual legislators to base their judgments on their own study of the subject matter of the legislation, their communications with constituents, and their own life experience and common sense so long as they come forward with the required showing in the courtroom once a challenge is raised." *Id.* at 178, emphasis added.

In *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999), *cert. denied*, 529 U.S. 1067 (2000), the court first noted that "[t]he Court in *Renton* did not address this issue. . . . " 185 F.3d at 830. Then, relying on *Phillips*,

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[3] Referring to *Mitchell v. Com'n on Adult Entertainment Est.*, 10 F.3d 123, 135 (3rd Cir. 1993), which approved the use by the trial court of post-enactment evidence to show the need for the Delaware statute regulating the hours of operation of adult entertainment businesses.



*supra*, the *DiMa* court stated that "[w]e also agree with the district court that a municipality may make a record for summary judgment or at trial with evidence that it may not have had when it enacted its ordinance." *Id.* at 829-830. The district court, relying in part on Justice Souter's concurrence in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 582 (1991), concluded that post enactment evidence of secondary effects adduced at trial is as persuasive in supporting the basis for the reasonableness of the legislative judgment as is pre-enactment evidence of secondary effects. *DiMa Corp. v. Town of Hallie*, 60 F.Supp.2d 918, 924 (W.D.Wisc. 1998).

Implicit in the notion that post-enactment evidence of need or justification is proper to sustain legislation against a constitutional challenge is the principle of legislative notice. That is, ". . . it is reasonable for local legislative bodies to take notice or assume matters of common knowledge and experience." *11126 Baltimore Blvd. v. Prince George's County, Md.*, 886 F.2d 1415, 1423 (4th Cir. 1989), *vacated on other grounds*, 496 U.S. 901 (1990). The court of appeals then went on to say:

> "As countless cases addressed by this court and courts across the nation will confirm, there are notorious and self-evident conditions attendant to the commercial exploitation of human sexuality which do not vary greatly among comparable communities within even so heterogeneous a country as our own. Thus, we are inclined to review the reasonableness of Prince George's County zoning ordinances not solely on the basis of the legislative record before it, but of what it reasonably foresaw in the light of a

sufficiently reported national experiences copiously documented in the public record." *Id.*

Therefore, in order to sustain a legislative judgment against a constitutional challenge, "a legislature is not bound to create an evidentiary record that would pass muster on plenary judicial review of legislation's necessity and fitness to achieve desired results. Judicial review goes only to whether the legislative determination of justification and fitness is not facially without factual support. . . . " *Id.* at 1424, quoting *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165, 1169 (4th Cir. 1986). Hence, "[l]egislatures can no more be held bound not to know what the whole world knows than can courts; legislative notice of facts must be deemed to run at least as wide as does judicial notice." *Id.*, quoting *Wall Distributors*, 782 F.2d at 1169 n. 7.

Although *Renton* did not directly address the issue, it does provide support for the conclusion that it is proper for a trial court to consider post-enactment evidence which the legislature may not have had before it when the regulation was enacted. That is in fact what occurred in *Renton*. Justice Brennan dissented (475 U.S. at 58-61) because the evidence relied upon by the City of Renton at trial to establish its governmental interest in the zoning ordinance controlling the secondary effects of adult theaters was almost entirely post-enactment evidence. The Renton ordinance was amended "[s]hortly *after* [the] lawsuit commenced" to add " 'findings' concerning adult entertainment land uses that the Council purportedly relied upon in adopting the ordinance." 475 U.S. at 58-59, emphasis in the original. Justice Brennan then went on to criticize reliance on these *post-hoc* statements. *Id.* at 59-60.



Thus, fairly read, *Renton* supports the City's position that evidence need not exist at the time of enactment so long as a proper showing is made at time of trial to support the inferences and conclusions that there is a justification for a zoning ordinance regulating the location of adult entertainment businesses.

In support of its contention that *post hoc* evidence at trial is not permitted, respondents rely upon *United States v. Virginia*, 518 U.S. 515 (1996). Respondents' Brief at 29. This reliance is misplaced. *United States v. Virginia* was an equal protection challenge to a gender based classification preventing women from attending the all male Virginia Military Institute founded in 1839. *Id.* at 520. Because this was a gender based classification denying women access to a public university, VMI's proffered justification for such a classification must be "exceedingly persuasive" and the burden on the state is "demanding." *Id.* at 533. Such classifications come with a strong presumption that the classification is invalid. *Id.* at 532. Although gender is not a proscribed classification, a heightened standard of judicial review applies. *Id.* at 533.

In order to side-step the constitutional problems attendant with its gender based classification, VMI chose to leave its exclusionary policy alone and to create a new, separate program for women, the Virginia Women's Institute for Leadership (VWIL). *Id.* at 526. This practice was justified because there should be educational diversity which includes single sex institutions of higher learning; a justification which found no support in the record. *Id.* at 539. Significantly, the record was a trial record which was not limited to the historic facts of 1839, but VMI was allowed to adduce evidence of current facts which would

support its justification for its male only practices, including expert testimony on the effects of single sex educational institutions, military institutions and coeducational institutions. *See, United States v. Virginia,* 852 F.Supp. 471 (W.D.Va. 1994).

Obviously, the heightened standard of review imposed by this Court in *United States v. Virginia* is inapposite to any analysis of an adult business zoning ordinance under the more deferential standard required by *Young* and *Renton,* especially in light of *United States v. Playboy Enterprises, supra.* In any event, the City's justification for its adult business zoning ordinance was explicitly set out in the 1977 Study (JA 37-46) and in the preamble to the 1978 ordinance. App. 60-62. Similarly, the justification for amending the 1978 ordinance because of an erroneous administrative interpretation was fully set forth prior to and concurrently with the amendment. JA 29-31; App. 74-75. Thus, unlike the gender classification under review in *United States v. Virginia,* the City's justification for its zoning regulations at issue here is genuine, not hypothetical, and certainly not invented "*post hoc* in response to litigation." *United States v. Virginia,* 518 U.S. at 533.

Nor is this Court's decision in *City of Los Angeles v. Preferred Communications, Inc.,* 476 U.S. 488 (1986), "unequivocal precedent" in support of the district court's decision to limit "its review to the materials and arguments which were in fact before the City Council at the time of the enactment of the challenged ordinance." Respondents' Brief at 30. Any fair reading of *Preferred*



*Communications* necessarily leads to the opposite conclusion – that it is proper to present post-enactment evidence at trial in order to justify a municipality's stated interest in its regulation – because that is what this Court did.

In *Preferred Communications,* the district court dismissed the complaint on a motion to dismiss for failure to state a claim upon which relief could be granted. 476 U.S. at 490. Given this procedural posture this Court "was unwilling to decide legal questions posed by the parties without a more thoroughly developed record of proceedings in which the parties have an opportunity to prove those disputed factual assertions upon which they rely." *Id.* at 494. The case was then remanded to the district court to allow the City to file its answer and to then resolve the outstanding factual issues concerning the award of the cable franchise at issue in the case. *Id.* at 496. Fact finding was necessary to "determine whether the characteristics of cable television make it sufficiently analogous to another medium to warrant application of an already existing standard [of First Amendment judicial review] or whether those characteristics require a new analysis." *Id.* at 496, (Blackmun, J., concurring).

This Court made no judgment on the applicable standard of review or in any manner attempted to direct the district court to exclude evidence not before the City Council when the City's cable franchise was awarded. Subsequently, the City was allowed to present evidence "to prove up each of its interests" on a motion for summary judgment. *Preferred Communications v. City of Los Angeles,* 13 F.3d 1327, 1330 (9th Cir.), *cert. denied,* 512 U.S. 1235 (1994). Thus, *Preferred Communications* must be seen

as consistent with those court of appeals decisions supporting the introduction of post-enactment evidence submitted to show the reasonableness of the challenged legislative judgment.

### C. The Issue of Alternate Avenues of Communication Is Not Before the Court.

Respondents take at least seven pages of their brief (at 33-39) to argue that the City's regulation prohibiting more than one adult business at a location fails to provide adequate alternative avenues of communication. Respondents comment that the City did not address this issue in its brief on the merits and they are, therefore, compelled to address this issue anticipating that the City will sandbag respondents by presenting its argument in this reply brief. (Respondents' Brief at 34.)

The City did not raise the issue of alternative avenues of communication in either its brief on the merits or in the petition for writ of certiorari for the very sound reason that the trial court's order holding that the City's regulation violated the First Amendment rendered that issue moot. App. 54. There has been no trial on this issue. No lower court has made findings of fact or conclusions of law on this issue. This Court granted certiorari on a petition that contained but one question, and it cannot be said that the issue of alternative avenues of communication is fairly included in that question.

Respondents even admit that the issue of alternative avenues of communication is not before the Court. Respondents' Brief at 47 n. 39. That admission, however, is not a concession. Rather, it is merely a segue to yet more discussion of an issue not before the Court when



the respondents implausibly assert that "there is at least a reasonable likelihood that Los Angeles' adult zoning scheme fails to provide adequate alternative sites for such businesses to allow them a 'reasonable opportunity' to relocate," relying on *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993), *cert. denied*, 511 U.S. 1030 (1994). Respondents' Brief at 47.

In the context of this case, respondents' argument is pure balderdash for two reasons. First, at issue in *Topanga Press* was the relocation of an estimated 102 existing adult businesses made non-conforming by the City's adult entertainment ordinance, and there were only an estimated 120 potential available relocation sites at that time. 989 F.2d at 1532-1533. Because of the potential hardship that would result to the owners of the adult businesses before a trial on the merits, the issuance of a preliminary injunction to prevent enforcement of the ordinance was proper.[4] *Id.* at 1534. Here, respondents' businesses are not pre-existing. They commenced operations well after the enactment of the multi-use prohibition and in open disregard of the City's regulation. JA 22.

Second, respondents here need find only two sites, not 102 as in *Topanga Press*. Each initially opened as a single adult business in conformity with the City's adult business zoning ordinance. JA 20. It was only later that they added a second business in open violation of the

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[4] The *Topanga Press* litigation was ultimately settled by the entry of a stipulated permanent injunction whereby the City would not enforce certain provisions of its adult business zoning ordinance against the nonconforming businesses. JA 257-258.

City's zoning ordinance, and it is only those two businesses which need another site. Thus, if this Court is being asked to make a finding on a moot issue based upon virtually non-existent facts whether there is a reasonable likelihood that respondents can find two sites in the vast expanse of the City of Los Angeles, it would have to be "yes."

### D. The *Amici* Brief of the American Booksellers Foundation Addresses Issues Not Before the Court.

The brief of respondents' *amici*, the American Booksellers Foundation for Free Expression, et al., is premised on inapposite facts and simply does not address the issues in this case. The Booksellers are heard to complain that "adult use regulations [are applied] to mainstream bookstores and video stores" (at 3, internal quotes omitted) and that over time municipalities have expanded their definitions of adult businesses to unfairly characterize mainstream businesses as "adult." *Id.* at 4-5. This supposed "creeping expansion" of adult uses has been occurring over the last 15 years. *Id.* at pp. 6-7. There is, however, no issue of changing definitions or creeping expansion of adult uses here since the City's definitions of adult businesses, all of them, were first enacted in 1978 (App. 60-69) and have remained unchanged since. Further, there is no issue that a "mainstream" bookstore or video arcade has been unfairly trapped by the City's definitions because respondents readily concede that they are adult businesses within the meaning of these now 23 year old definitions.



By conjuring up an irrational legislative future, nothing is added to the legal analysis which this Court requires to resolve the substantial legal issues before it.

### E. The Brief and Lodged Reports of the First Amendment Lawyers Association Is Entirely Outside the Record and Should Be Stricken.

The First Amendment Lawyers Association has improperly lodged with the Court a very large compilation of various reports which purport to show that "older" studies demonstrating the existence of negative secondary effects from adult businesses, including the City's 1977 Study, are scientifically invalid.[5] Brief of First Amendment Lawyers at 21, *et seq.* One of the reports, undated, was specifically prepared to attack the 1977 Study in this Court. *Id.* at 20 and App. 1-42. By extension, then, this Court is asked to presume that the legislative judgment which led to the City's 1978 zoning ordinance regulating adult businesses was based on a false premise and, therefore, the City's ordinance was constitutionally infirm *ab initio*.

The City, or one of its *amici*, could easily counter with its own, equally voluminous, lodging of reports and specially prepared papers proving the existence of negative secondary effects or attacking various studies relied upon by respondents and their *amici*. The City could download

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[5] The First Amendment Lawyers do not request the Court to take judicial notice of these reports. It is doubtful whether the Federal Rules of Evidence permits any court to take judicial notice of the contents of contested reports. See, *e.g.*, *Carley v. Wheeled Coach*, 991 F.2d 1117, 1126 (3rd Cir.), *cert. denied*, 510 U.S. 868 (1993).

and submit to the Court the contents of a web site containing thousands of pages establishing the negative impacts of adult businesses[6] or provide more than a few string cites showing the existence of negative secondary effects. Happily, the City will not do so.

One case, however, is particularly relevant here, *Stringfellow's of New York, Ltd. v. City of New York*, 91 N.Y.2d 382, 694 N.E.2d 407, 671 N.Y.S.2d 406 (1998), *cert. denied sub nom. Amsterdam Video v. City of New York*, 525 U.S. 1067 (1999). The court in *Stringfellow's* discusses with approval the comprehensive undertaking by the City of New York in documenting the negative effects on the quality of urban life resulting from the clustering of adult businesses, not only in that City, but also as a problem of national significance.[7] New York's reliance on studies outside New York was "well placed" and it also relied on its "own detailed study." *Buzzetti v. City of New York*, 140 F.3d 134, 140 (2nd Cir.), *cert. denied*, 525 U.S. 924 (1998).

*Stringfellow's* shows that, notwithstanding the telephone book size submission of the First Amendment Lawyers, the central issue of whether adult businesses

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[6] See, www.communitydefense.org.

[7] The reason adult businesses cluster was explained to this Court in *Young*. "Moreover, to whatever extent adult theatres and bookstores do tend to locate close to one another, they do so presumably because a larger market of consumers thus becomes available. If it is true that the consumer of sexually oriented reading and viewing material prefers to shop in an area where several outlets are available, the restriction contained in the ordinances impose an economic disadvantage on the proprietors of adult theatres and bookstores as well as a burden upon the consuming public." Brief of Respondents, No. 75-312, at 75.



can cause negative secondary effects which was first documented in *Young*, and then in *Renton*, remains as much a current problem for municipalities large and small, as it was in the late 1970's for the City of Los Angeles. Nothing lodged by the First Amendment Lawyers undermines the constitutional principle that municipalities can regulate the well documented adverse negative effects through their zoning regulations.

Given the on-going debate, the inability of these reports to cast a legitimate doubt on the City's legislative judgment is self evident, and the Court should conclude as did one of *respondents' amici*, DKT Liberty Project that:

> "Our point is not that these studies could never support a city ordinance limiting the location of adult businesses. Rather, the studies themselves demonstrate that there is substantial evidence on both sides of the issue." Brief of DKT Liberty Project at 13.

**F. There Is No Issue Before the Court That the City's Regulation Is Pretextual.**

Respondents repeatedly suggest that the City's regulation is a pretextual attempt to somehow censor or ban adult video stores. *See, e.g.*, Respondents' Brief at 10-11, 14-16, 29-30, 32,[8] and 44.[9] Such insinuations, however, are

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[8] Where it is explicitly stated that the City's regulation is "blatantly pretextual legislation."

[9] Here, respondents assert that "in 1983, as a pretextual way of eliminating the medium of video previewing booths, the City presumed to define a new type of independent business (which had never before existed), calling it an 'adult

not supported by any evidence in the record. Neither the trial court nor the court of appeals characterized the City's regulation as pretextual. Neither court rendered any finding of fact on that issue.

By its own terms, the City's regulation prohibiting more than one adult business at a location is not pretextual as to adult video arcades because it applies to all combinations of adult businesses, not just bookstore/video arcade combinations. App. 71 ("no person shall cause or permit the establishment or maintenance of more than one adult entertainment business in the same building, structure or portion thereof. . . . "). Moreover, factually, respondents' thesis is disproved since Highland Books, one of the two respondents in this case, opened as an adult video arcade in 1987 in compliance with the City's adult zoning ordinance. JA 20.

## CONCLUSION

Twenty-five years ago this Court in *Young* upheld the need to protect the quality of urban life and residential neighborhoods from the proven negative secondary effects of adult businesses. These were substantial governmental interests, and, therefore, "it is undeniable that

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arcade'. . . . " However, they have their facts wrong. The City "presumed" to define an adult arcade in 1978 at the same time it defined the other adult businesses regulated by the City's Ordinance, including adult bookstores. App. 62. These definitions have not been amended since and respondents have not sought to directly challenge the validity of these definitions in this lawsuit.



zoning, when used to preserve the character of specific areas of a city, is perhaps 'the most essential function performed by local governments, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life.' " *Young*, 427 U.S. at 80 (Powell, J., concurring, quoting *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13 (1974).). Fifteen years ago, in *Renton*, this Court reaffirmed the importance of the governmental interests identified in *Young* and rejected the argument that the First Amendment required irrefutable proof of secondary effects before a municipality could enact a zoning ordinance regulating the location of adult businesses.

The Ninth Circuit decision, in reasoning and result, is inconsistent with *Young* and *Renton*. The briefs of respondents and their *amici* provide no basis to affirm the decision of the Ninth Circuit. They merely revisit arguments raised and rejected by this Court, first in *Young* and then in *Renton*. Because there is nothing new under the First Amendment sky over the City of Angels, the judgment of the Ninth Circuit should be reversed because it is in direct conflict with this Court's precedent.

Respectfully submitted,

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